



# SHORELAND ZONING NEWS

Volume 17, Issue III

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## Please Share

For over 15 years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.



## Guidelines to be Amended

Department staff is readying draft amendments to the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*, last amended in 2000. The draft is not yet ready for public distribution, but the shoreland zoning staff expects to complete it by February of 2005. After the draft is completed we will send copies to each of the municipalities and anticipate holding public informational meetings on the proposed amendments. Afterward, the Department will ask the Board of Environmental Protection to authorize a public hearing or comment period before asking the Board to approve the changes.

You may be asking yourselves why the Department is proposing changes to the Guidelines at this time. First, the Legislature has amended the clearing/buffer standards pursuant to the Natural Resources Protection Act for water bodies that are not shoreland zoned. Those amended clearing standards have already been adopted by the Land Use Regulation Commission for its unorganized territories. The Department now plans to amend its clearing standards for shoreland areas in organized municipalities so that they are consistent throughout the State. The changes, if adopted by the Board, will result in a modified "point system", will limit footpaths to six feet in width even on coastal properties, and will require vegetation less than three feet in height to be maintained in the setback/buffer area in all shoreland areas.

The Department of Environmental Protection is not planning to amend the timber harvesting standards at this time. The Department of Conservation (DOC) is currently drafting state-wide timber harvesting standards, but they have not yet been enacted. When the state-wide timber harvesting standards are adopted by the DOC the shoreland zoning unit will include those amendments in our Guidelines.

Another reason the Department is recommending changes to the shoreland zoning Guidelines document is that many people remain confused over coastal setback issues. Individuals, and some towns, still consider coastal setbacks as measured from mean high water, rather than the maximum spring tide level (i.e.: upland edge of the coastal wetland).

Finally, the Department recognizes that there are other areas of the Guidelines that are not clear, or are deficient. When the draft is completed we will explain proposed changes at regional meetings.



## New NRPA Point System

This past Legislative session yielded a fairly significant change to the Natural Resources Protection Act (NRPA) exemption pertaining to cutting or clearing of vegetation adjacent to protected natural resources that are not subject to shoreland zoning laws (38 M.R.S.A. §480-Q.23). This change does not affect your local shoreland zoning authority, rather it applies only to those areas around protected resources that do not fall under shoreland zoning regulations. The NRPA is a distinctly separate set of regulations than shoreland zoning, but it will eventually become important for you to understand the content of the change.

The NRPA amendment utilizes a plot size double that of the shoreland zoning *point system*, a 25 foot by 50 foot plot instead of a 25 foot square area. Tree diameter point assignment differs as well. Trees from 2 to 4 inches in diameter are still worth one point, while those 4 to 8 inches are worth 2 points. Trees 8 to 12 inches are worth 4 points, and those 12 or more inches are now worth 8 points. Note that there are four tree size classes in which to achieve points. The number of required points in any plot is expectedly different in that it requires that one maintains a minimum of 16 points in all areas.

Another deviation from the Guidelines includes a provision that allows no more than 50% of the points on any plot to be from trees greater than 12 inches in diameter, where conditions permit. In addition, vegetation under 3 feet in height must be retained in *all* areas, not only around great ponds. Furthermore, at least 5 saplings less than 2 inches in diameter must be retained in all plots.

Why are we telling you, primarily an audience made up of municipal officials, about these changes to a law administered exclusively by the DEP? It is important to know that these same changes will be incorporated into the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines) in the very near future. As you read in our feature article, we are in the process of

finalizing draft changes to the Guidelines. Municipalities will eventually be required to adopt amendments to local ordinances that incorporate these changes.



## Normal High-Water Line Confusion Cleared Up

With frequency, the Department's Field Services & Enforcement staffers make site visits with Code Enforcement Officers, property owners, contractors, surveyors, and others to determine the extent of the Department's regulatory authority under various laws administered by the Department.

Quite often the issues at a site are natural resource based and staff is asked to determine the upland edge of a wetland or the normal high-water line (NHWL) of a waterbody. Generally, our field services and licensing staff are making a determination of NHWL as it applies to the Natural Resources Protection Act (NRPA) only. Municipal officials and others can become entranced with the Department's NHWL determination techniques and lose focus of a very important issue, that the NHWL determination is not necessarily the same as it may be under the town's shoreland zoning ordinance.

Most town ordinances define the normal high-water line as State shoreland zoning guidelines suggest. This definition is identical to the NRPA definition of NHWL, except that the shoreland zoning definition adds the following language: "[i]n the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water." In most cases the NHWL determination is consistent with the NRPA determination. However, in those cases where there is wetland adjacent to a great pond or river that occurs at or below the higher water level of the year, those wetlands are technically considered to be part of the river

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## Contract Zoning Reminder

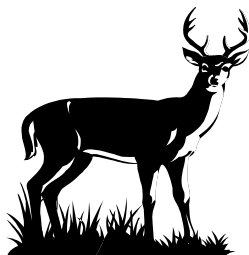
For those municipalities that implement contract zoning within shoreland zoned areas, please note that the Department must review each contract that the municipality approves within shoreland areas, just as we review all other ordinance amendments.

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or great pond. Structure setbacks would begin at that point.

We have seen instances where the NRPA and shoreland zoning NHWL determinations differ by as much as 60 feet. In one particular case the CEO based his local shoreland zoning setbacks on the NRPA NHWL determination. Significant wetlands were present, which resulted in a new structure located not only immediately adjacent to, but even over the lake. Fortunately the structure was a wooden walkway (approximately 100' long) and it was easily (relatively speaking, of course) moved back from the lake during the resolution of other violations on the site.

Department staff dealing with NRPA issues will continue to make a strong effort to inform the interested parties that their normal high-water line determination is based solely on the NRPA definition, and not the shoreland zoning definition. Meanwhile, people (municipal officials especially) should be very aware of this potential discrepancy and appropriately apply their local ordinance. If a municipal official desires assistance in determining where the normal high-water line is based on their ordinance language, some of the Department's field services staff are qualified to assist in this matter, or you may contact the Department Shoreland Zoning Unit staff person in your region. (Our contact information is located on the last page of this newsletter)



### *We're Looking for Some Good Stories and Questions!!!*

Have any good tales from the field? Nightmares from the courtroom? Questions that frequently arise? Feel free to contact us with these quips and we will consider sharing the stories in this newsletter in an effort to help others. The Shoreland Zoning News is intended to provide you with information to help you do your job!

## Replacement of a Structure: Part II

After our last edition of the Shoreland Zoning News we were contacted by a CEO from a town that adopted and administers the alternative to the 30% expansion rule. He requested that we clarify the non-conforming structure replacement standards under this alternate provision, much like we did in our last edition for those towns with the standard 30% expansion rule.

As you may be aware, the alternative to the 30% expansion rule is an optional method of limiting expansions of non-conforming structures based on certain criteria. Here are the highlights:

- No portion of a structure located within 25 feet of the shoreline may be expanded;
- For structures located less than 75 feet from the shoreline, the maximum combined floor area for all structures is 1000 square feet, and the maximum building height is 20 feet or the height of the existing structure, whichever is greater;
- For structures located less than 100 feet from the shoreline of a great pond or river flowing to a great pond, the combined maximum floor area for all structures is 1500 square feet and the maximum building height is 25 feet. However, no more than 1000 square feet may be within 75 feet of the waterbody.

This alternative language replaces only the *30% expansion* section of most ordinances (Section 12-C(1) of the Guidelines), and therefore the relocation, reconstruction or replacement, and change of use provisions still apply as usual. The replacement of 50% or more of the market value of a structure would then require the replacement structure to meet the shoreline setback to the greatest practical extent. That said, if one has a 1600 square foot structure located 7 feet from a great pond and the "greatest practical extent" is determined to be 60 feet from the water, the structure must be moved to 60 feet from the water even though the size doesn't conform to the maximum allowable floor area. Obviously an expansion within 100 feet of the pond would not be allowed, since the structure is already greater than 1,500 square feet in total floor area.



### **Reminder:**

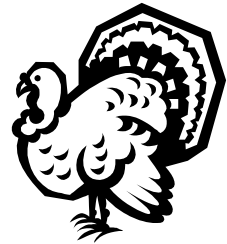
Quite frequently we receive calls with questions pertaining to proposed variances that are to be reviewed by a municipal board of appeals. In some cases we receive written notification from towns of an upcoming hearing about a variance application. However, we often do not receive notification of the town's decision in such a matter. Municipalities are required to submit a copy of all variance decisions (affecting shoreland zoning standards) to the Department within 14 days of a decision. Please remember to forward these decisions to the Department. For those that consistently remember, keep up the good work!

### **Contact Us:**

Rich Baker, Coordinator, Augusta: 287-7730  
Tracey Thibault, Bangor: 941-4116  
Mike Morse, Portland 822-6328

### **Questions & Answers:**

- Q. Does a river have to flow directly into a great pond in order to require a 100' minimum setback instead of 75'?
- A. No. If a river eventually flows into a GPA great pond either directly or indirectly through another waterbody then the minimum setback on the river must be 100 feet. One such case is the Crooked River in Casco. The Crooked River is a river by definition and indirectly flows into Sebago Lake. Before entering Sebago Lake it flows into the Songo River, which directly flows into Sebago Lake. As such, the Crooked River must have a minimum buffer area of 100 feet up to the upstream limit where it first becomes a river (Albany Brook).



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